EUROPEAN
COMMISSION

Brussels, 20.10.2021
COM(2021) 641 final

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment

1. INTRODUCTION

Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment[1] (the RoHS Directive) lays down rules on the restriction of the use of hazardous substances in electrical and electronic equipment (EEE) with a view of contributing to the protection of human health and the environment, including the environmentally sound recovery and disposal of waste EEE.

Article 4 of the RoHS Directive obliges Member States to ensure that EEE placed on the market does not contain the substances listed in Annex II. Annexes III and IV list applications exempted from that restriction.

The Directive empowers the Commission to adopt delegated acts with regard to three different provisions, in view of:

- the specification of detailed rules for complying with maximum concentration values by weight in homogeneous materials as specified in Annex II of the Directive, provided for in RoHS Article 4(2);
- the adaptation of Annexes III and IV to scientific and technical progress, both for inclusion and deletion of exemptions from the restriction provided in Article 4(1), provided for in the RoHS Directive Article 5(1);
- the review and amendment of the list of restricted substances in Annex II, provided for in Article 6(3).

2. LEGAL BASIS

The present report is required under Article 20(1) of the RoHS Directive. Pursuant to this provision, the power to adopt delegated acts is conferred on the Commission for a period of five years from 21 July 2011 and the Commission is required to draw up a report in respect of delegated powers, at the latest 6 months before the end of the five year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 21. The previous report[2] on the exercise of the delegation of power conferred on the Commission with regard to Directive 2011/65/EU was adopted by the Commission on 18 April 2016. The Commission invited the European Parliament and the Council to take note of that report.

[1] OJ L 174, 1.7.2011, p. 88.
[2] COM (2016) 215 final, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0215&from=EN.

3. EXERCISE OF THE DELEGATION

The exercise of the delegated power was necessary during the reporting period with respect to several provisions foreseen by the Directive, as follows:

3.1. Rules for complying with maximum concentration values, Article 4(2)

Regarding the specifications of detailed rules for complying with maximum concentration values by weight in homogeneous materials as specified in RoHS Annex II, since the previous report[3], there has been no change in the situation as regards the necessity to adopt a delegated act to provide for those rules in accordance with Article 4(2).

3.2. Exemptions from the substance restrictions provided for in Article 4(1), under Article 5(1)

During the period covered by this report[4], the Commission received 102 applications[5], for the adaptation of the Directive's Annexes III and IV to scientific and technical progress regarding exemptions from the substance restriction in accordance with RoHS Article 5, 50 of which were submitted between November 2019 and January 2020 and 26 in January 2021. Following the required scientific and technical assessment of these applications, the Commission adopted 32 individual delegated directives[6] to amend Annexes III and IV with

[3] Ibid.
[4] Until 18 April 2021.
[5] Note that several applications may refer to the same exemption/ new application to be included in the Annex.
[6] Commission Delegated Directive (EU) **2021/884** of 8 March 2021;
Commission Delegated Directive (EU) **2021/647** of 15 January 2021;
Commission Delegated Directive (EU) **2020/360** of 17 December 2019;
Commission Delegated Directive (EU) **2020/361** of 17 December 2019;
Commission Delegated Directive (EU) **2020/364** of 17 December 2019;
Commission Delegated Directive (EU) **2020/365** of 17 December 2019;
Commission Delegated Directive (EU) **2020/366** of 17 December 2019;
Commission Delegated Directive (EU) **2019/1845** of 8 August 2019;
Commission Delegated Directive (EU) **2019/1846** of 8 August 2019;
Commission Delegated Directive (EU) **2019/169** of 16 November 2018;
Commission Delegated Directive (EU) **2019/170** of 16 November 2018;
Commission Delegated Directive (EU) **2019/171** of 16 November 2018;
Commission Delegated Directive (EU) **2019/172** of 16 November 2018;
Commission Delegated Directive (EU) **2019/173** of 16 November 2018;
Commission Delegated Directive (EU) **2019/174** of 16 November 2018;
Commission Delegated Directive (EU) **2019/175** of 16 November 2018;
Commission Delegated Directive (EU) **2019/176** of 16 November 2018;
Commission Delegated Directive (EU) **2019/177** of 16 November 2018;
Commission Delegated Directive (EU) **2019/178** of 16 November 2018;
Commission Delegated Directive (EU) **2018/739** of 1 March 2018;
Commission Delegated Directive (EU) **2018/740** of 1 March 2018;
Commission Delegated Directive (EU) **2018/741** of 1 March 2018;
Commission Delegated Directive (EU) **2018/742** of 1 March 2018;
Commission Delegated Directive (EU) **2018/736** of 27 February 2018;
Commission Delegated Directive (EU) **2018/737** of 27 February 2018;
Commission Delegated Directive (EU) **2018/738** of 27 February 2018;

regard to exemptions from the substance restrictions. The Commission is currently preparing a further 19 delegated acts and is carrying out the evaluation of 57 exemption applications which may lead to further delegated acts.

Neither the European Parliament nor the Council objected to any of the Commission delegated directives adopted since the last report referred to above and, on expiry of the scrutiny period provided for in Article 22 of the Directive, these delegated acts were published in the *Official Journal of the European Union* and entered into force on the date therein specified.

3.3. Amendment of the list of restricted substances, Article 6(3)

According to Article 6 (1) of the RoHS Directive, a review, based on a thorough assessment, and amendment of the list of restricted substances in Annex II shall be considered by the Commission before 22 July 2014, and periodically thereafter on its own initiative or following the submission of a proposal by a Member State. The measures to review and amend the list of restricted substances in Annex II shall be adopted by the Commission by means of delegated act. Further to the delegated directive[7] amending the list of restricted substances in Annex II reported in the previous report, a scientific and technical assessment study[8], including stakeholder and RoHS Member States experts[9] consultations, to support a review of the list of restricted substances was undertaken from January 2018 to February 2021. A proposal to add medium-chained chlorinated paraffins (MCCP) to the list of restricted substances submitted by the Swedish Chemicals Agency to the Commission in June 2018 was also assessed in the study.

Based on this study, the Commission will proceed with further steps to consider an amendment of the list of restricted substances in Annex II.

3.4. General considerations related to the exercise of delegated powers under the RoHS Directive

A number of steps have to be carried out to comply with the requirements of the Directive and the Commission's Better Regulation principles for the preparation and adoption of each

---

Commission Delegated Directive (EU) **2017/1975** of August 2017, to be read in conjunction with the Corrigendum;
Commission Delegated Directive (EU) **2017/1009** of March 2017;
Commission Delegated Directive (EU) **2017/1010** of March 2017;
Commission Delegated Directive (EU) **2017/1011** of March 2017;
Commission Delegated Directive (EU) **2016/1028** of 19 April 2016;
Commission Delegated Directive (EU) **2016/1029** of 19 April 2016

[7] Commission Delegated Directive (EU) 2015/863 of 31 March 2015, *OJ L 137, 4.6.2015*, p.10.

[8] Study to support the review of the list of restricted substances and to assess a new exemption request under RoHS 2 (Pack 15). https://op.europa.eu/en/publication-detail/-/publication/ce50dc9c-6c19-11eb-aeb5-01aa75ed71a1/language-en/format-PDF/source-197106951.

[9] Members of the Expert Group for RoHS 2 adaptation and enforcement https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?do=groupDetail.groupDetail&groupID=2810.

delegated act concerning either the evaluation of a request for exemption or of new substance restrictions. These include in particular, a scientific and technical assessment being outsourced to an external consultant extensive stakeholder consultations, the consultation of the Member States' Expert Group convened for the preparation of delegated acts pursuant to the RoHS Directive and information of the European Parliament and the Council, the notification to the World Trade Organisation's Committee on Technical Barriers to Trade publication of draft acts for public feedback and related consideration of inter-service feedback as well as the European Parliament and Council two-month scrutiny period.

Article 24(2) of the Directive requires the Commission to carry out a general review of the Directive. The Commission is currently carrying out that review, and an impact assessment study to feed into it is underway. A study to support the preceding evaluation of the Directive is completed[10]. It has identified areas for potential improvements regarding, inter alia, the process for deciding on the exemptions mentioned above, which will also be reflected in the Commission's evaluation report. The review of the RoHS Directive will therefore consider ways to address, inter alia, the respective procedures.

4. CONCLUSION

Over the past five years, the Commission has exercised properly the delegated powers conferred to it under Directive 2011/65/EU. It invites the European Parliament and the Council to take note of this report.

[10] Support for the evaluation of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment https://op.europa.eu/en/publication-detail/-/publication/5b807311-9d93-11eb-b85c-01aa75ed71a1/language-en/format-PDF/source-216492720.